

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
CITAK & CITAK, DONALD CITAK and  
BURTON CITAK,

Plaintiffs,

**Civil Action No. 07 CIV 5459 (WHP)**

- against -

THE ST. PAUL TRAVELERS COMPANIES,  
INC., a/k/a ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY,

Defendant.

-----X

**DECLARATION  
IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND  
IN SUPPORT OF PLAINTIFFS' CROSS-MOTION TO AMEND COMPLAINT**

1. PETER WESSEL, an attorney duly licensed to practice law before the courts in the State of New York and admitted to the Bar of the District Court for the Southern District of New York, subscribes and declares under penalty of perjury that the following is true and correct, pursuant to 28 U.S.C. § 1746.
2. I am the attorney for the Plaintiffs in the above action and, as such, am fully familiar with the facts and circumstances herein.
3. I submit this Declaration in opposition of Defendant's motion to dismiss the Amended Complaint and in support of Plaintiffs' cross-motion to further amend their Amended Complaint herein, due to information that yesterday came into your declarant's possession.
4. All exhibits submitted in support of Plaintiffs' cross-motion to amend and in opposition to Defendant's motion to dismiss have been labeled with Roman Numerals to

distinguish them from those annexed to the Amended Complaint and the Proposed Second Amended Complaint.


5. All of the exhibits in Plaintiffs' Proposed Second Amended Complaint are the same as those attached to the Amended Complaint, except for the new Exhibit "2A".
6. Plaintiffs' Proposed Second Amended Complaint herein contains only one new document, which is labeled as "**Exhibit 2A**". That exhibit is a copy of a letter dated January 27, 2006, which was obtained yesterday from the files of the Department Disciplinary Committee for the First Judicial Department ("DDC"); it is a letter sent via fax by Plaintiff Donald L. Citak, Esq., to Joel A. Peterson of the DDC.
7. A list of the exhibits annexed to the Plaintiffs' motion papers herein (other than the exhibits in the Proposed Second Amended Complaint), are as follows:

- |                               |  |
|-------------------------------|--|
| <b><u>Exhibit "I":</u></b>    | Plaintiffs' Amended Complaint, dated January 18, 2008;   |
| <b><u>Exhibit "II":</u></b>   | Plaintiffs' Proposed Second Amended Complaint, dated February 28, 2008;  |
| <b><u>Exhibit "III":</u></b>  | Plaintiffs' current insurance policy issued by Defendant;  |
| <b><u>Exhibit "IV":</u></b>   | December 6, 2000 letter from Plaintiffs to the Martons;  |
| <b><u>Exhibit "V":</u></b>    | The Martons' check for \$250.00 (December 7, 2000) as payment to Plaintiffs;   |
| <b><u>Exhibit "VI":</u></b>   | AIA Contract between the Martons and Hogan Contracting, Inc.;  |
| <b><u>Exhibit "VII":</u></b>  | Stuart Marton's February 4, 2003 Affidavit in Opposition to Hogan Contracting, Inc's Motion to Dismiss;                            |
| <b><u>Exhibit "VIII":</u></b> | Plaintiffs' Demand to AAA for Arbitration (November 12, 2003) with check from the Martons to AAA for \$325.00 (November 11, 2003); |

- Exhibit "IX":** November 19, 2003 from Plaintiffs to Stuart Marton;
- Exhibit "X":** November 21, 2003 letter from AAA to Plaintiffs;
- Exhibit "XI":** AAA "Submission to Dispute Resolution Form" (December 3, 2003) sent by Plaintiffs to Maguire & Pollack; and
- Exhibit "XII":** Segment of Departmental Disciplinary Committee "Complaints Against Lawyers" Pamphlet.

**WHEREFORE,** I respectfully submit these Exhibits, the Declaration of DONALD L. CITAK, ESQ., dated February 28, 2008, the Declaration of BURTON CITAK, ESQ., dated February 28, 2008, and the accompanying the Memorandum of Law in support of the instant cross-motion to further amend the complaint and in opposition to defendant's motion to dismiss.

Dated: New York, NY  
February 28, 2008

  
\_\_\_\_\_  
PETER WESSEL (PW 4164)